

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 5
 Bill Version: CSSSHB 53(HES)
 (5) Publish Date: 4/4/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to child-in-need-of-aid
proceedings..." RDU CIVIL
 Sponsor Representative Coghill Component Torts & Worker's Compensation &
 Requester House HESS Human Services
 Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	2,024.4	2,024.4	2,024.4	2,024.4	2,024.4	2,024.4
Travel	5.1	5.1	5.1	5.1	5.1	5.1
Contractual	298.6	298.6	298.6	298.6	298.6	298.6
Supplies	31.6	31.6	31.6	31.6	31.6	31.6
Equipment	128.2	17.6	17.6	17.6	17.6	17.6
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	2,487.9	2,377.3	2,377.3	2,377.3	2,377.3	2,377.3

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	2,487.9	2,377.3	2,377.3	2,377.3	2,377.3	2,377.3
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	2,487.9	2,377.3	2,377.3	2,377.3	2,377.3	2,377.3

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal: ☐

POSITIONS

Full-time	19	19	19	19	19	19
Part-time	3	3	3	3	3	3
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 47.10 (Children in Need of Aid). Passage of this legislation will impact the Department of Law in a number of ways.

1. Section 7 strengthens the rights of biological grandparents in a custody proceeding for a child in need of aid when one or both of the child's parents are dead and the child has been abandoned by a remaining parent. It is anticipated that a number of instances will arise where the State would take the position that granting custody to the child's biological grandparents is not in the child's best interest. We estimate that each existing CINA attorney would handle 2 such contested custody proceeding each year and that each would take about 3 days. Each paralegal would also handle 2 such contested hearings per year for one day. Total fiscal impact from the additional work load is \$76,671. Half of an

Prepared by: Kathryn Daughhetee, Director Phone 465-3673
 Division Administrative Services Division Date/Time 3/14/05 4:31 PM
 Approved by: K. Daughhetee for Scott N. Nordstrand, Acting Attorney General Date 3/14/2005
 Agency Department of Law

FISCAL NOTE #5

STATE OF ALASKA 2005 LEGISLATIVE SESSION

BILL NO. CSSSHB 53(HES)

ANALYSIS CONTINUATION

attorney position is also requested in conjunction with the funding to allow the Department to add a part time attorney to handle the increased caseload.

2. Section 8 conveys the right to demand a jury trial in a hearing on a petition to terminate parental rights. In the Department of Health and Social Services analysis of the bill, an estimate of 90 new jury trials would result if this section of the bill is passed. The Department of Law believes that this estimate may be low, as a case may turn into several trials when there are a number of children involved in the petition, and also a number of parents - a case may involve one mother but more than one father. Also, parents who would have otherwise relinquished parental rights may see a new chance with a jury rather than with a judge who may be familiar with their history as parents. Preparation for a jury trial, rather than a hearing, requires preparation of a much more detailed presentation. Consequently, we estimate each CINA attorney would need to handle about two of these cases per month at 3 days each and each paralegal would also handle two per month at 2 days each. Total fiscal impact from the additional workload is estimated at \$938,523 and includes funding for 5 new attorneys and a paralegal and 2 new Law Office Assistants.

3. Section 10 changes statutes that apply to confidentiality of child in need of aid matters. Longstanding policies, practices and procedures of every agency and branch of government involved in child welfare protection will be altered. As a result it is anticipated that disputes will arise over the interpretation and implementation of this legislation. The additional operating costs to resolve such disputes are estimated based on 400 additional attorney hours per year at a cost of \$49,696. Half of an attorney position is also requested in conjunction with the funding to allow the Department to add a part time attorney to handle the increased caseload.

4. Section 12 of the bill allows a parent, family member, or guardian who is denied visitation rights the right to request a review hearing thereby increasing the number of hearings attorneys must prepare for and attend. Sections 14 and 15 make a relative preference for adoption but adds three reasons why adoption may be denied to the relative. These sections will give rise to a number of contests and good cause findings. Taken together, these sections will cause an increase in the caseload that will add another 2 days of work to each CINA attorney's schedule and one day of work for each paralegal. This is a conservative estimate based on the assumption that some issues will be worked out early on in the placement process. We estimate that each attorney will experience an increased workload of just under one week a month. That will cost \$938,523 which will fund 5 additional attorneys, one paralegal, and two law office assistants.

5. Section 27 addresses immunity from liability but does not actually provide immunity, it provides that if you comply with the law, you are immune. The Department believes there will be lawsuits filed where a litigant disagrees with whether AS 47.10 was followed regarding one or more of its provisions.

6. Section 30 of the bill amends AS 47.10.960 and requires the adoption of regulations establishing a duty and standard of care for services to children and their families served under AS 47.10. Passage of this amendment will open the state to the argument that the mandatory provisions of the act could be the basis for statutory civil actions for damages. At present, if there are concerns about functions not being properly carried out in a Child in Need of Aid (CINA) case, children, parents, foster parents, and the department can and do bring those matters to the attention of the judge involved in the CINA matter. Parents are represented by counsel, and guardians ad litem are often appointed to advocate on behalf of the child's best interests. If any of the involved parties files an independent lawsuit for damages outside the CINA case, it will require substantial additional resources to respond and could complicate and impede conclusion of the CINA case.

As of March 2005, approximately 2,000 children were in state custody in out-of-home placement. If only 2 percent of those children, or their parents, chose to initiate tort litigation based on a perceived failure of the department to comply with a mandatory provision of AS 47.10, there would be 40 new cases a year. We estimate it would take a tort litigator 15-20 hours to gather and review the necessary factual information from the underlying CINA proceedings, and another 20-25 hours to litigate the threshold question of whether the plaintiff had a cognizable legal claim based on violation of a CINA statute. A conservative estimate of the time needed to defend these new cases would be 1,600 hours per year. If the court found a statutory damages claim to be viable, many more hours would be required to engage in discovery, depositions, and trial preparation. Full litigation of just one such case a year would be expected to take 100 hours of attorney time. These cases are usually very document intensive, and we anticipate 20 -30 hours of paraprofessional time would be required and an average of \$1,500 for direct case costs including deposition and document production costs in each of the new cases.

2005 LEGISLATIVE SESSION

ANALYSIS CONTINUATION

We estimate that at a minimum, the services of one and a half full-time equivalent attorney positions and one full-time equivalent paraprofessional would be required to defend the state from new tort claims filed as a result of the bill. \$60,000 is included for direct case costs. Total fiscal impact estimated from section 30 is \$484,386.

In addition to litigation stemming from CINA cases, we anticipate that this bill may spawn new tort litigation based on law enforcement's alleged failure to comply with statutory provisions regarding runaway and missing minors. AS 47.10.141 imposes many obligations on law enforcement agencies and peace officers to locate these minors and take them into protective custody. Without the language in current AS 47.10.960, a minor or parent may assert that these mandatory requirements create potential tort liability analogous to that found by the Alaska Supreme Court in *Busby v. Municipality of Anchorage*, 741 P.2d 235 (Alaska 1987). That case found that former AS 47.37.170(b) imposed a mandatory duty to take intoxicated persons into protective custody, the failure of which created potential tort liability. We cannot estimate how many such cases might be litigated, but note that the potential defendants to these claims would not be limited to state agencies or personnel.

7. The creation in statute of the Citizens' Review Panels for Permanency Planning is likely to result in additional regulation and legislation work as the Panel adopts policies and regulations that govern it and rely on resources within the State's CINA network to conduct its reviews and prepare its annual report to the Governor. Fiscal impacts arising from this new work are not determinable at this time. It is likely that any regulations work will need to be funded by the Department of Health and Social Services if it becomes a priority and there are not sufficient resources to take on regulations projects or legislative drafting when it is needed.

Position costs are based on the department's current cost allocation plan, and include clerical support, communications, space, supplies, data processing, and other normal overhead expenses. The standard cost does not include one-time new equipment purchases, and \$6,500 per position is included. Proportionate support position funding is included in the cost schedule at a rate of approximately one support position for every three professional positions. Position authorizations for support positions are required, however, and one FTE law office assistant position is included. This will be necessary if sections are passed that in and of themselves would not cause the need for an additional law office assistant, but taken as a whole, would.